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The time period for reply, if any, is set in the attached communication.

1 RECORD OF ORAL HEARING

2
3 UNITED STATES PATENT AND TRADEMARK OFFICE

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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES

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10 *Ex parte GREGORY ASHTON et al.*

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13 Appeal No. 2009-008829
14 Application No. 10/774768
15 Technology Center 3700

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18 Oral Hearing Held: January 13, 2011

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21 Before WILLIAM F. PATE, III, LINDA E. HORNER and FRED A.
22 SILVERBERG, *Administrative Patent Judges.*

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24 APPEARANCES:

25
26 ON BEHALF OF THE APPELLANT:

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34
35 The above-entitled matter came on for hearing on Thursday, January 13,
36 2011 commencing at 9:17 a.m., at the U.S. Patent and Trademark Office,
37 600 Dulany Street, Alexandria, Virginia, before Paula Lowery, Notary
38 Public.

PROCEEDINGS

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3 THE USHER: Good morning. Calendar Number 33, Appeal No. 2009-
4 008829, Mr. Matson.

5 JUDGE PATE: Good morning, Mr. Matson.

6 MR. MATSON: Good morning.

7 JUDGE PATE: We've looked at this case beforehand, so we think we
8 understand the technology. We'd like to hear your arguments about
9 patentability.

10 MR. MATSON: Okay. Thank you for your time this morning.

11 As you probably already understand, this case is related to disposable
12 absorbent articles. More particularly, the claims directed to absorbent
13 articles in the form of pull-on garments and training pants, having a handle
14 for assisting in the application of putting the garment on the wearer.

15 Starting with independent Claim 1 of the pending application, it recites an
16 absorbent article in the form of a pull-on garment comprising, among other
17 elements, at least one handle for assisting in the application of the article
18 onto a wearer.

19 The handle is a flap comprising a stratum. The flap forms a gap between the
20 stratum and the chassis side wall -- the chassis or the side wall. The flap is
21 joined to the garment-facing surface of the article by longitudinal welds.

22 The Examiner rejects independent Claim 1, independent Claims 2, 3, 5, 6,
23 and 22 through 30 under 35 USC 102(b) over patent publication 2002-
24 009136881, which I'll refer to from here on as LaVon.

25 LaVon does not disclose a handle as recited in Claim 1. Instead LaVon

1 discloses an absorbent article that has nonremovable absorbent cores or a
2 core in the crotch region, and removable core components that may be
3 inserted into the front and rear regions of the article.
4 LaVon discloses what it refers to as a flap 620, which is shown in Figure 7.
5 It's used to cover an opening in the article that receives the removable
6 absorbent cores, or you can remove the cores from. So it's a flap cover.
7 It's our contention that the Examiner committed error in characterizing the
8 flap of LaVon as a handle. Again, the flap 620 of LaVon is not a handle
9 used to assist in the application of the article to a wearer. Rather, it's a cover
10 for the opening that receives the removable cores. This is discussed in
11 Paragraph 115 of LaVon and again shown in Figure 7.
12 Claim 1 also recites the flap is joined to the garment-facing surface of the
13 garment by longitudinal welds. The Examiner attempts to equate the
14 fasteners 625 of Figure 7 of LaVon with the claimed welds.
15 Figure 7 appears to show hook and loop-type fasteners. Paragraph 122 also
16 discusses a flap wherein it may include hook and loop fasteners or adhesive
17 that allows for multiple closings and openings of the flap cover.
18 It's our contention these are not seen as the claimed welds that would hold a
19 handle on an absorbent article that's used to assist the user in applying it to
20 the wearer.
21 The specification of the present application recites that the flap 200 may be
22 welded by an adhesive heat bond, pressure bonds, ultrasonic bonds, dynamic
23 mechanic bonds, or combinations thereof. That's on page 14.
24 The specification also draws a distinction between welds and resealable
25 fasteners. When discussing the side seams, which is a different portion of

1 the absorbent article, but it's there in that text it provides a distinction
2 between welds and resealable fasteners.
3 If I may, it's on page 6, starting at line 16. It says: "The welding of seams
4 32 can be performed by any suitable means known in the art appropriate for
5 specific materials employed in the expandible ears 46 and 48. Thus sonic
6 sealing, heat sealing, pressure bonding adhesive or cohesive bonding,
7 sewing, autogenous bonding and the like may be appropriate techniques.
8 "Preferably, the extensible ears 46 and 48 are joined by a predetermined
9 pattern of heat pressure or ultrasonic welds that withstands the forces and
10 stresses generated on the pull-on diaper during wear. Pull-on diaper 20 may
11 have tear-open tabs 31 whose position is associated with the seams 32.
12 "In an alternative embodiment not shown in the figures, the seams may
13 include a sealable fastener such as, but not limited to, hook and loop
14 fasteners, buttons, zippers, tab and slot, adhesives, cohesives, and the like."
15 So it's our contention that the claimed welds are not the same as resealable
16 bonds. They're welds.
17 With regards to dependent Claims 5, 6, 25 and 26, which depend from Claim
18 1 -- in particular Claim 5 depends from Claim 1 and 25 from 5, 6 depends
19 from Claim 1, and 26 depends from 6 -- the Examiner commits error by
20 referring to Figure 10 of LaVon to find support for the elements of these
21 dependent claims.
22 Claim 5 recites the limitation where in the stratum there's a belt zone that is
23 folded over. That, I believe, is shown in Figure 2B of the present
24 specification and discussed on page 13.
25 Claim 25 recites a lateral weld on that stratum.

1 Now, the Examiner refers to Figure 10's disclosure of where the stratum is a
2 portion of the belt zone as folded away from the wearer; but I look at the
3 embodiment in Figure 10, and it shows a removable back panel that can be
4 resealably or removably connected with the article and then removed.
5 There's no belt portion that is folded over. So we believe there is error in
6 that.

7 In addition, the embodiment in Figure 10 is different from Figure 7, which
8 was used by the Examiner in anticipation of Claim 1. The two don't match
9 up. So we believe there's error committed in combining those two
10 embodiments to find anticipation of the dependent claims.

11 With regard to dependent Claim 24, which depends from Claim 5, again,
12 Claim 5 recites the belt zone as folded over; and Claim 24 recites a
13 limitation of a cut-through portion. The Examiner discusses or recites
14 Figure 9 of LaVon to find support of the claimed cut-through portion.
15 Again, the embodiment Figure 9 is a different embodiment than what is
16 shown in Figure 7, which was used to find anticipation of Claim 1. In
17 particular, Figure 9 shows a plurality of the back panel members that we
18 inserted into a pocket. They're separated by what's called blocking layers,
19 which is labeled 670.

20 The Examiner erroneously equates these blocking layers of Figure 9 with the
21 claimed cut-through portion of Claim 24, which are just different
22 embodiments.

23 With regard to the rejections under 103, the Examiner rejected Claims 21,
24 22, 31, and 32 over LaVon as being obvious under 35 USC 103. It's
25 Appellant's contention those dependent claims are patentable for at least the

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- 1 same reasons as Claim 1.
- 2 Independent Claim 33 also rejected under 35 USC 103 over LaVon recites a
- 3 kit with training pants in it. The pants include a handle for assisting in the
- 4 application of the training pants on the wearer.
- 5 It's our contention that LaVon doesn't disclose a handle for assisting in the
- 6 application of the article on the wearer. So for that reason we believe that
- 7 Claim 33 is patentable over LaVon and 103.
- 8 JUDGE PATE: Judge Silverberg, any questions?
- 9 JUDGE SILVERBERG: No.
- 10 JUDGE PATE: Judge Horner?
- 11 JUDGE HORNER: No.
- 12 JUDGE PATE: I have no questions either, so we're going to take this case
- 13 under advisement.
- 14 Thank you very much.
- 15 MR. MATSON: Thank you.
- 16 (Whereupon, the proceedings at 9:27 a.m. were concluded.)